IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.1948 OF 2006

In

WRIT PETITION NO.3082 OF 2001

Martu Purushottam Nayak & Ors. : Applicants

V/s.

Aviva Abraham Benjamin & Ors. : Respondents

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Mr.G.S.Godbole for the applicants.

Mr.N.R.Bubna with Mr.R.S.Apte for respondent no.3.

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CORAM : S.A.BOBDE, J.

DATE : SEPTEMBER 07, 2007.

P.C.

1. This is an application by the petitioners-landlords for a direction to the respondent no.3 to deposit an amount of Rs.15,000/- per month in this Court by way of compensation for occupying the suit premises. The suit premises are one flat on the 1st floor of Pensovilla, Dr.M.B.Raut Road, Shivaji Park, Dadar (West), Mumbai. The respondent no.3, who is in occupation of the flat, has been held not to have any rights for occupying the said flat. Both the Courts below observed that she has failed to prove that she and her family members are using the

flat commonly with deceased Solomon and deceased Abraham and that they were residing as one family unit. The Courts below have, however, failed to decree the petitioners' suit only on the ground that there was a defect in following the procedure for appointment of minors.

2. Having regard to these circumstances where the respondent no.3 has been held not to have any rights in the suit flat, but is occupying the flat without any justification in law, I consider it appropriate, in the interest of justice, to direct the respondent no.3 to pay compensation at the rate of Rs.10,000/- per month from today. The compensation shall be payable before the 10th of every month for the preceding month. On the respondent no.3's failing to make payment for two consecutive months, the petitioners would be entitled to apply to this Court for appointment of Receiver.

3. Add to the final hearing board.

4. Mr.Bubna, the learned counsel for the respondent no.3, prays for stay of this order. The oral application for stay is rejected.

S.A. BOBDE, J.